D.A. DUNCAN v. PUBLIC PROSECUTOR

[F.C. (Raja Azlan Shah C.J. (Malaya), Wan Suleiman & Chang Min Tat F.JJ.) June 16, 1980]

[Kuala Lumpur — Federal Court Criminal Appeal No. 40 of 1979]

Criminal Law and Procedure — Charge of trafficking in dangerous drugs — Denial of accused — No doubt cast on prosecution case — Sentence — Dangerous Drugs Ordinance, 1952, ss. 37 and 39.

Evidence — Deposition at Preliminary inquiry — Witness could not be traced — Admissibility — Evidence Act, 1950, s. 32.

In this case the appellant had been convicted of trafficking in dangerous drugs and sentenced to life imprisonment and whipping of six strokes. He appealed against the conviction and sentence.

Held: dismissing the appeal, the prosecution in this case had proved their case beyond reasonable doubt and the defence had not cast any doubt on the case for the prosecution that the appellant had custody, control and possession of the dangerous drugs.

Case referred to:-

(1) *Loh Hock Seng & Anor.* v. *Public Prosecutor* [1980] 2 M.L.J. 13.

FEDERAL COURT.

R.R. Sethu for the appellant.

Sheik Daud bin Haji Mohamed Ismail (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah C.J. (Malaya) (delivering the judgment of the Court): A mixed bag of dangerous drugs to wit, 1,647 grammes of cannabis, 683.86 grammes of morphine and 933.21 grammes of heroin was found in four boxes. The dangerous drugs, were in sufficient quantities as to lead to the inference as a matter of commonsense of trafficking in dangerous drugs against anyone found to have in his custody or under his control the boxes containing the said drugs as would lead to the inference of possession thereof, under section 37(d), and bring the offence under the more serious category under section 39B(1)(a), for which the penalty is death or sentence for life.

The question in this appeal was whether the prosecution had proved their case beyond reasonable doubt and the defence had cast any doubt on the case for the prosecution that the appellant had such custody control or possession. The four boxes were carried in a bus which entered Malaysia at Changloon. The bus had come from Haadyai and carried the appellant as a passenger and visitor. It had to stop at the Immigration and Customs check points at Changloon, the border town. Unfortunately for the appellant and unknown to him, an order had been issued for his detention. At the Immigration Office, he was told he would not be allowed to proceed in the bus and he had therefore to unload his luggage. He held his brief case and he had to return to the bus to recover his other luggage. He was the only one detained and therefore the only one with reason to unload. What was unloaded was one other bag and the four boxes. The appellant did not dispute that the bag was his but strenuously throughout his trial denied any connection with the four boxes.

The prosecution evidence traced the loading of the four boxes in Haadyai to their detention at Changloon. Evidence was adduced that the appellant had to pay excess fare for the bulky boxes and that he was the one who had brought the boxes along for transport. Part of the evidence consisted of a deposition at the Preliminary Enquiry of a witness who could now not be traced. The deposition was admitted over the protest of counsel for the appellant. We are however fully satisfied that sufficient evidence was adduced to justify the court's admission of the deposition under section 32 of the Evidence Act. Evidence was also adduced that at Changloon the appellant was the active party in the unloading and it was he who at the request of the customs opened the boxes. The boxes were found to contain mounted Siamese face masks but the dangerous drugs which were subsequently found to be hidden inside the masks were not discovered until later in Kuala Lumpur, again in the presence of the appellant. In the meantime the boxes remained in the custody of Chief Inspector Yeoh.

Now this evidence, if accepted and believed, is clearly sufficient to establish a *prima facie* case against the appellant. The High Court at Alor Star accepted it and called on the defence. The defence was, in effect, a simple denial of the evidence connecting the appellant with the four boxes. We cannot see any plausible ground for saying that the four boxes were not his. In the circumstances of the prosecution evidence, the High Court came, in our view, to the correct conclusion that this denial did not cast a doubt on the prosecution case against the appellant.

We have read the record with some care and we have listened to what counsel for the appellant and the appellant himself have said at the appeal before us. We have however not heard a single good and sufficient reason for allowing the appeal.

The enormity of the crime, and the seriousness of the view taken by this court in sentencing drug traffickers need no further discussion. There is no occasion to repeat what we said in *Loh Hock Seng & Anor.* v. *Public Prosecutor.*[1] There is no reason to depart from the approach summarised in that judgment as that appropriate when considering the sentencing of drug traffickers.

The appellant is lucky to escape with life imprisonment and having regard to the quantity and variety of the drugs, with only 6 strokes.

The appeal against conviction is dismissed.

Appeal dismissed.

Solicitors: *Sethu, Ghazali & Gomez.*